UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

GRACE GONZALEZ GARCIA, et al.,

Plaintiffs,

v.

PUERTO RICO ELECTRIC POWER AUTHORITY, et al.,

Defendants.

Civil No. 98-1894 (JAF)

OPINION AND ORDER

Plaintiffs, Grace González García ("González García"), her husband, Jorge Bracero Landrón, and their conjugal partnership, filed the present action against Plaintiff González García's former employer, Puerto Rico Electric Power Authority ("PREPA"), and its executive director, Miguel A. Cordero, alleging, inter alia, political discrimination, in violation of 42 U.S.C. § 1983 (1994 & Supp. 2002) and Puerto Rico law. Docket Document No. 1.

On July 17, 2002, we held that Plaintiff González García's political discrimination claims against Defendant PREPA were time-barred, and entered summary judgment in favor of Defendant PREPA. Docket Document No. 70. We ordered Plaintiffs to show cause as to why we should not also enter summary judgment in favor of Defendant Cordero on statute of limitations grounds. Id.

On August 22, 2002, Plaintiffs submitted a motion explicating why their claims against Defendant Cordero are not time-barred. Docket Document No. 84. Defendant Cordero tendered an opposition on September 24, 2002. On October 10, 2002, Plaintiffs tendered a sur-reply.

I.

Factual and Procedural Synopsis

Since the facts of this case have changed little since our July 16, 2002 Opinion and Order, we largely reiterate the case's factual background here. See Docket Document No. 70.

Defendant PREPA is a public corporation and an instrumentality of the commonwealth of Puerto Rico. Defendant Miguel A. Cordero is the executive director of PREPA and is a resident of Puerto Rico. Plaintiffs' González García and Bracero Landrón are residents of Puerto Rico. Plaintiff González García is affiliated with the "Partido Popular Democrático" (Popular Democratic Party, "PPD") and Defendant Cordero is associated with the "Partido Nuevo Progresista" (New Progressive Party, "NPP").

On February 13, 1984, Plaintiff González García[1] began working as a temporary employee in the Human Resources Department of PREPA.

---

[1]Future references to "Plaintiff" allude to Plaintiff González García.

Docket Document No. 46, Exh. 1. Plaintiff became a permanent employee of PREPA on August 11, 1985. Id. at Exh. 2. In 1991, Plaintiff González García became a General Supervisor of the Department of Human Resources Evaluation at PREPA. Docket Document No. 53, Exhs. I, II. Plaintiff maintains that her position did not involve functions of trust or the implementation of public policy. Id.

While employed at PREPA, Plaintiff González García actively participated in and organized PPD activities and events, and she informed her co-workers and supervisors of her political affiliation. Id. at Exh. I.

Plaintiffs allege that when Defendant Cordero was appointed as the executive director of PREPA, he immediately began a campaign to rid PREPA of employees associated with the PPD. Plaintiffs allege that Cordero demoted or removed thirteen PPD-affiliated employees, and replaced them with members of the NPP. See id.

Plaintiffs also assert that Defendant Cordero began a campaign of discrimination and harassment against Plaintiff González García based on her political ideology, in an attempt to force her to resign from her job. Id.

Plaintiff González García avers that Plaintiff's supervisors made derogatory, harassing remarks to Plaintiff and other employees

affiliated with the PPD. Id. According to Plaintiff González García, Defendant PREPA's officers "constantly" told her that they intended to "get rid of" and "cut the throats" of the PPD members. Id.

Plaintiff González García alleges that on July 18, 1993, she was demoted in title, salary, and benefits, and was transferred to the Office of Health and Occupational Security to work as an Administrative Affairs Supervisor in the Preventative Health Program. She contends that she was demoted without any explanation, and that her previous position was filled by an employee associated with the NPP. Id.

Plaintiffs claim that Defendants PREPA and Cordero constantly added extra functions and duties to Plaintiff González García's new position, and that her supervisors told Plaintiff that she performed these duties too slowly. Id.

Plaintiff González García also alleges that Defendants PREPA and Cordero refused to promote her based on her political affiliation. Id. Plaintiffs allege that Defendant PREPA assigned Magali Alverio to the position of Supervisor of the Department of Human Resources Evaluation, and that Plaintiff González García rightfully deserved that position. Id.

In response to the purported discrimination, Plaintiff González García filed a number of internal grievances. On March 4, 1994,

Plaintiff filed an internal complaint alleging that she was illegally demoted and replaced based on her political affiliation. Id. at Exh. V. On March 8, 1994, Plaintiff González García filed an official grievance alleging that the assignment of an NPP employee to the position of Supervisor of the Department of Human Resources Evaluation was an act of political discrimination. Id. at Exh. IV. Plaintiff González García filed a grievance with Defendant PREPA's Office of Equal Opportunity in Employment on November 15, 1995, alleging harassment by one of her supervisors. See id. at Exhs. I, X. On August 23, 1996, Plaintiff wrote a letter to Defendant Cordero, explaining that she felt her supervisors at PREPA were harassing her and discriminating against her. See id. at Exh. I, IV. Plaintiff alleges that no action was taken in response to her various complaints.

On July 9, 1997, Plaintiff González García filed a complaint with the Anti-Discrimination Unit ("ADU") of the Department of Labor and Human Resources, in which she asserted political discrimination on the basis of her affiliation with the PPD. Docket Document No. 46, Exh. 3.

Plaintiff took a leave of absence due to a physical injury on July 24, 1997. Id. at Exh. 4. Plaintiffs proffer affidavits in which they assert that while Plaintiff González García was on leave from

PREPA, her supervisors called her at home almost every day and told her that she must return to work or she would lose her job. Docket Document No. 84, Exhs. I, XXII. Plaintiff González García did not return to work at PREPA after July 24, 1997. Docket Document No. 46, Exh. 5.

Plaintiff González García submitted a letter of resignation on March 24, 1998. Docket Document No. 46, Exh. 6. Her resignation became effective on March 31, 1998. Id.

Plaintiffs González García and Bracero Landrón filed the present action on August 4, 1998. Docket Document No. 1. In the complaint, Plaintiff González García alleged that Defendants discriminated against her based on her disability and her age. On March 6, 2000, Plaintiffs moved for a voluntary dismissal with regard to these causes of actions. Docket Document No. 30.

Plaintiffs continued to assert that Defendants PREPA and Cordero discriminated against Plaintiff González García based on her political beliefs and affiliation, in violation of the First Amendment, U.S. CONST. amend. I, 42 U.S.C. § 1983, and Puerto Rico law.

On May 21, 1999, Defendant Cordero filed a motion to dismiss. Docket Document No. 7. Defendants Cordero and PREPA filed an additional motion to dismiss on January 7, 2000. Docket Document

No. 23. On October 12, 2001, we denied Defendants' motions to dismiss without prejudice in accordance with Local Rule 311.2. See D.P.R. Loc. R. 311.2. Docket Document No. 45.

Defendant PREPA filed a motion for summary judgment on October 22, 2001, arguing that Plaintiff González García's section 1983 claim was time-barred. Docket Document No. 46. Plaintiffs opposed the motion. Docket Document 53. Defendant PREPA filed a reply on March 14, 2002. Docket Document No. 57.

Defendant Cordero filed a motion to dismiss on November 5, 2001 on the grounds that: (1) Plaintiff González García has failed to state a claim pursuant to section 1983; (2) her section 1983 claim is time-barred; (3) Defendant Cordero is shielded from liability by the doctrine of qualified immunity; (4) Plaintiff Bracero Landrón does not have standing to assert a claim under section 1983; and (5) this court should decline to assert supplemental jurisdiction over Plaintiffs' state law claims. Docket Document No. 49. Plaintiff opposed the motion on the exclusive ground that Defendant Cordero's motion was not filed in a timely manner. Docket Document No. 50.

On July 17, 2002, we granted Defendant PREPA's motion for summary judgment because we found that Plaintiff González García's section 1983 claim against Defendant PREPA was time-barred. Docket Document No. 70. We informed Plaintiffs that we intended to treat

Defendant Cordero's motion to dismiss as a motion for summary judgment, and ordered Plaintiffs to show cause as to why we should not enter summary judgment in favor of Defendant Cordero on statute of limitations grounds. Id.

On August 22, 2002, Plaintiffs submitted an opposition to Defendant Cordero's motion to dismiss, with an accompanying memorandum of law. Docket Document No. 84. On September 24, 2002, Defendant Cordero tendered a reply in which he adopts and incorporates PREPA's motion for summary judgment. Plaintiffs tendered a sur-reply on October 10, 2002.

II.

Motion for Summary Judgment Under Rule 56(c)

The standard for summary judgment is straightforward and well-established. A district court should grant a motion for summary judgment "if the pleadings, depositions, and answers to the interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgement as a matter of law." FED. R. CIV. P. 56(c); see Lipsett v. Univ. of P.R., 864 F.2d 881, 894 (1st Cir. 1988). A factual dispute is "material" if it "might affect the outcome of the suit under the governing law," and "genuine" if the evidence is such that "a reasonable jury could

return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The burden of establishing the nonexistence of a genuine issue as to a material fact is on the moving party. See Celotex Corp. v. Catrett, 477 U.S. 317, 331 (1986). This burden has two components: (1) an initial burden of production, which shifts to the nonmoving party if satisfied by the moving party; and (2) an ultimate burden of persuasion, which always remains on the moving party. See id. In other words, "[t]he party moving for summary judgement, bears the initial burden of demonstrating that there are no genuine issues of material fact for trial." Hinchey v. NYNEX Corp., 144 F.3d 134, 140 (1st Cir. 1998). This burden "may be discharged by showing that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325. After such a showing, the "burden shifts to the nonmoving party, with respect to each issue on which he has the burden of proof, to demonstrate that a trier of fact reasonably could find in his favor." DeNovellis v. Shalala, 124 F.3d 298, 306 (1st Cir. 1997) (citing Celotex, 477 U.S. at 322-25).

Although the ultimate burden of persuasion remains on the moving party and the court should draw all reasonable inferences in favor of the nonmoving party, the nonmoving party will not defeat a properly supported motion for summary judgment by merely underscoring the

"existence of some alleged factual dispute between the parties"; the requirement is that there be a genuine issue of material fact. Anderson, 477 U.S. at 247-48; Goldman v. First Nat'l Bank of Boston, 985 F.2d 1113, 1116 (1st Cir. 1993). In addition, "factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248. Under Rule 56(e) of the Federal Rules of Civil Procedure, the non-moving party "may not rest upon the mere allegations or denials of the adverse party's pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); see also Anderson, 477 U.S. at 256. Summary judgment exists to "pierce the boilerplate of the pleadings," Wynne v. Tufts Univ. Sch. of Med., 976 F.2d 791, 794 (1st Cir. 1992), and "determine whether a trial actually is necessary." Vega-Rodriguez v. P.R. Tel. Co., 110 F.3d 174, 178 (1st Cir. 1997).

III.

Analysis

A. Statute of Limitations

Defendant Cordero argues that Plaintiff's claim of political discrimination accrued on the date that she was demoted, July 18, 1993, and is therefore time-barred. Docket Document No. 49.

Plaintiff asserts that her political discrimination claim accrued on one of three alternative dates: (1) March 24, 1998, the

date she resigned from PREPA; (2) May 4, 1998, the date that her ADU case was closed; or (3) August 19, 1998, the date that PREPA dismissed her internal charges of discrimination. Docket Document No. 84.

1. Applicable Statute of Limitations

To determine the applicable statute of limitations for this action, we first turn to Section 1983 to determine its provisions. Section 1983, however, lacks an accompanying federal statute of limitations.[2] See 42 U.S.C. § 1983. Consequently, we adopt relevant provisions from the analogous statute of limitations of the forum state. See Wilson v. García, 471 U.S. 261, 266-80 (1985) (directing federal courts in section 1983 actions to borrow and apply a state's statute of limitations for personal injury cases).

For section 1983, the most appropriate provision is the statute of limitations for personal injury cases. See Owens v. Okure, 488

---

[2]Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

U.S. 235, 236 (1989). In Puerto Rico, a one-year statute of limitations governs personal injury actions. See 31 L.P.R.A. § 5298(2) (1991).[3] Therefore, we apply the one-year prescriptive period to Plaintiff's section 1983 action. See Rivera-Ramos v. Román, 156 F.3d 276, 282 (1st Cir. 1998).

2. Date of Accrual

"Although the limitations period is determined by state law, the date of accrual is a federal law question." Carreras-Rosa v. Alves-Cruz, 127 F.3d 172, 174 (1st Cir. 1997) (per curiam); see also Rivera-Ramos, 156 F.3d at 282 ("For section 1983 actions, federal law governs the date on which a cause of action accrues (i.e., when the statute begins to run) while the length of the period and tolling doctrine are taken from local law.") (internal citations omitted). The one-year statute of limitations "begins running one day after the date of accrual, which is the date plaintiff knew or had reason to

---

[3]Section 5298 stipulates:

> The following prescribe in one (1) year:
> . . . .
> (2) Actions to demand civil liability for grave insults or calumny, and for obligations arising from the fault or negligence mentioned in section 5141 of this title, from the time the aggrieved person had knowledge thereof.

31 L.P.R.A. § 5298.

know of the injury." Benitez-Pons v. P.R., 136 F.3d 54, 59 (1st Cir. 1998) (internal citations omitted).

Here, Plaintiff alleges three potential accrual dates. We examine each one in turn.

a. Administrative Appeals

Plaintiff first alleges that during her thirteen-year tenure as an employee at PREPA, she was harassed, demoted, transferred, and denied a promotion based on her political affiliation. Plaintiff filed internal and administrative complaints based on the alleged discrimination. Plaintiff proposes that her section 1983 claim accrued either when PREPA dismissed her internal charge of political discrimination or when the ADU closed her administrative appeal.

Plaintiff has not proffered any support for her position that an employment discrimination claim accrues following the dismissal of an internal grievance or administrative appeal. In fact, the case law authoritatively dispenses with this argument.

A claim of political discrimination does not accrue upon the completion of an administrative investigation into the employee's allegation. Rather, unambiguous and authoritative notice of the adverse employment action itself triggers the limitations period. See Rivera-Muriente v. Agosto-Alicea, 959 F.2d 349, 353 (1st Cir. 1992) (section 1983 case). As such, a limitations period normally starts

to run when the employer's decision is made and communicated to the affected employee. Morris v. Gov't Dev. Bank of P.R., 27 F.3d 746, 750 (1st Cir. 1994) (section 1983 case). A plaintiff does not need to know of the discriminatory animus behind the adverse employment action for the statute of limitations to begin to run. Id. at 749-750. Furthermore, a plaintiff does not need to know all of the facts supporting her claim before the statute of limitations may commence. Id. at 750 (internal citations omitted).

Therefore, the statute of limitations accrued on the date that Plaintiff had notice of each of the adverse employment actions that formed the basis of her administrative complaints. See Docket Document No. 70. Regardless of whether Plaintiff's internal and administrative grievances were resolved within the statutory time period, the completion of the internal and administrative appellate processes does not impact our statute of limitations analysis.[4]

[4] Furthermore, we need not consider whether the statute of limitations was tolled when Plaintiff González García filed her administrative grievance. In our Opinion and Order of July 12, 2002, we explained that "even if we were to construe Plaintiff's complaint with the ADU as an extrajudicial claim, its effect would be to restart the limitations period on July 9, 1997. Since Plaintiffs did not file suit within a year of the date she filed the ADU complaint, the tolling provision does not impact our analysis in the present case." Docket Document No. 70.

b. Constructive Discharge

(1) Standard

Plaintiff González García claims that she was constructively discharged on March 24, 1998.

Although resignation is ordinarily not a discriminatory act, when a resignation constitutes a constructive discharge, it is considered a discriminatory act. See Draper v. Coeur Rochester, Inc. 147 F.3d 1104, 1110-11 (9th Cir. 1998) (quoting Young v. Nat'l Center for Health Servs. Research, 828 F.2d 235, 238 (4th Cir. 1987)). To establish a constructive discharge, a plaintiff must show "working conditions so intolerable . . . that a reasonable person would feel compelled to forsake his job rather than to submit to looming indignities." Landrau-Romero v. Banco Popular de P.R., 212 F.3d 607, 613 (1st Cir. 2000) (internal citations omitted)

However, "[i]f a plaintiff does not resign within a reasonable time period after the alleged harassment, he was not constructively discharged." Id. (citing Smith v. Bath Iron Works Corp., 943 F.2d 164, 167 (1st Cir. 1991)). In Smith, the First Circuit found that no constructive discharge occurred where plaintiff quit six months after the last reported incident of sex discrimination. 943 F.2d at 167. Similarly, in Landrau-Romero, the First Circuit held that a seven-month gap between the alleged employment discrimination and

plaintiff's resignation was too great a time period to find that plaintiff had been constructively discharged. 212 F.3d at 613.

(2) Evidence

Here, Plaintiff left work for medical reasons on July 24, 1997 and tendered her resignation on March 24, 1998. To state a claim of constructive discharge, Plaintiff must allege that she resigned soon after being harassed. Plaintiff claims that she was harassed over the phone in the eight-month period between when she stopped working at PREPA and when she officially resigned. She appears to assert that this harassment contributed to the intolerable working conditions that purportedly forced her to resign.

(a) Plaintiff Bracero Landrón's affidavit

As evidence of the alleged constructive discharge, Plaintiff Bracero Landrón proffers an affidavit from August 22, 2002, in which he states that his wife, Plaintiff González García, was harassed by her supervisors, Jorge Cuevas and Yelitza García, between December 1997 and March 1998. Docket Document No. 84, Exh. XXII. He claims that Cuevas and García called his wife three or four times a week and ordered her to her to return to work or face strict disciplinary actions. Id.

Defendant Cordero moves to strike Plaintiff Bracero Landrón's affidavit statement on the ground that it contradicts his earlier

deposition testimony. In his deposition on September 22, 1999, Plaintiff Bracero Landrón testified that on one or two occasions after Plaintiff González García stopped working at PREPA, Cuevas called Plaintiffs' house. Plaintiff Bracero Landrón also testified during his deposition that he did not know García. He attested that if she had called his house in the past he did not remember.

"When an interested witness has given clear answers to unambiguous questions, he cannot create a conflict and resist summary judgment with an affidavit that is clearly contradictory, but does not give a satisfactory explanation of why the testimony is changed." See Morales v. A.C. Orssleff's EFTF, 246 F.3d 32, 35 (1st Cir. 2001) (citing Colantuoni v. Alfred Calcagni & Sons, 44 F.3d 1, 4-5 (1st Cir. 1994)). This edict helps ensure the credibility of evidence presented during summary judgment. See Hernandez-Loring v. Universidad Metropolitana, 233 F.3d 49, 54 (1st Cir. 2000). "[T]he rule is also a matter of policy: if prior statements under oath could be disavowed at will after a motion is made, the other side would be faced with a constantly moving target and summary dispositions made almost impossible." Id. However, a lapse in memory, confusion, or newly discovered evidence may explain plainly inconsistent testimony. Id.

Plaintiff Bracero Landrón's August 22, 2002 affidavit statement that García called frequently to make harassing phone calls contravenes his earlier deposition testimony that he does not know García or remember her calling his wife. Furthermore, Plaintiff Bracero Landrón's sworn statement that Cuevas called three or four times a week contradicts his deposition testimony that Cuevas called on one or two occasions after Plaintiff González García left work.

Plaintiffs' attorney asserts that Plaintiff Bracero Landrón did not recall the telephone conversations during his deposition and that only after three years of exposure to the documentary evidence was he able to recollect the harassing nature of the phone calls. However, in the context of summary judgment, an explanation for changed testimony must come from the affiant, not from his attorney. See generally FED. R. CIV. P. 56(e); Wynne, 976 F.2d at 794. In his affidavit, Plaintiff Bracero Landrón does not offer any reason for his contradictory testimony. Since Plaintiff Bracero Landrón has not explained the contradiction, we will not consider his affidavit testimony in the disposition of the present summary judgment motion.

(b) Plaintiff González García's Affidavit

Plaintiff González García also offers an updated affidavit. In her affidavit of August 22, 2002, she asserts that while she was on medical leave from work, Cuevas and García called her frequently at

home and told her to report to work or they would terminate her. Docket Document No. 84, Exh. I. Plaintiff contends that during her deposition on September 22, 1999, Defendant PREPA's attorney interrupted her and did not allow her to testify that Cuevas made harassing phone calls based on her political affiliation.

Defendant Cordero moves to strike this affidavit testimony on the ground that it clearly contradicts Plaintiff's September 22, 1999 deposition testimony.

During Plaintiff's deposition, she testified that she received many telephone calls at home while she was on leave from PREPA, and that these were apparently social calls to see how she was doing. Docket Document No. 55, Exh. A. When asked about the contents of the calls, Plaintiff did not testify that her supervisors harassed or threatened her.[5] Id.

---

[5]The relevant deposition testimony is as follows:

> Q: You never returned to work. And you were never within the environment of the office?
> A: The environment, as such, yes I was, because I received many telephone calls at home.
> Q: Uhum. From whom?
> A: Well from the personnel there, from Mr. Jorge Cuevas, who called me a lot, well my fellow workers called me a lot to see how I was doing, even Mrs. Yelitza García called me also.
> Q: They were social calls to find out how you were doing?
> A: Apparently.
> Q: Aside for asking you how you felt, did they ask you anything else, did they refer to anything else?
> A: Yes, I remember one call from Mrs. Yelitza García

Plaintiff's affidavit testimony that she received harassing, discriminatory telephone calls during her leave of absence directly contravenes her earlier deposition testimony that she received frequent social phone calls. Plaintiff now appears to argue that during her deposition, she was unable to accurately convey the contents of the telephone conversations with her supervisors. Plaintiff attests that Defendant PREPA's attorney did not allow her to fully explain the telephone conversations with Cuevas and Yelitza García, which caused the discrepancy in testimony. Plaintiff maintains that during her deposition she repeatedly explained that

---

> . . . when I answered she said 'Oh I thought I was not going to find you at home, because I call there and you are never in,' . . . when she achieved contacting me she always said that she called my house and couldn't get me.
> Q: Okay. Aside from greeting you and giving you best wishes at Christmas and asking where you were going to spend New Year's Eve, were any other calls made?
> A: Mr. Jorge Cuevas called me every week, he called me.
> Q: At any time did you have a friendship with Mr. Jorge Cuevas?
> . . .
> A: I cannot say I had a friendship relationship with him, because he was not my friend, he was simply my fellow worker in the Authority and that was simply the only place we saw each other. . .
> . . .
> Q: Nor did you give each other gifts, nor anything?
> A: He, he put a lot of gifts on the desk.
> Q: Why?
> A: I don't know, because apparently he told me that he liked me and he was always giving me some type of small gift. . . .

Docket Document No. 55, Exh. A.

her relationships with Cuevas and Yelitza García were not cordial and that her supervisors harassed and discriminated against her based on her political affiliation.

Under the present circumstances, Plaintiff's contention that she did not have an adequate opportunity to respond to the deposition questions does not satisfactorily explain the change in testimony. Plaintiff's attorney was present at the deposition and had the opportunity at that time to ask questions to clarify whether Plaintiff's telephone conversations with Cuevas and Yelitza García were harassing. Plaintiff's attorney failed to do so. Even if Plaintiff felt that she was unable to explain the nature of the telephone conversations during her deposition, she had a chance to correct the alleged errors and explain the contradiction in her affidavit of December 28, 2001. The August 22, 2002 comes nearly three years after Plaintiff's initial deposition, and only after we refused to consider Plaintiff's affidavit of December 28, 2001 and issued an order to show cause as to why this case should not be dismissed. Plaintiff's testimony has effectively become a moving target and lacks adequate justification for the contradictions. Therefore, we decline to consider the contradictory portion of the updated affidavit.

Based on the record before us, there is no admissible evidence that Plaintiff received harassing phone calls while she was on medical leave. As such, Plaintiff has not established that her supervisors discriminated against her after she left work on July 24, 1997. Plaintiff resigned on March 24, 1998, eight months after she took a leave of absence from PREPA and nine months after the last alleged act of discrimination. Therefore, pursuant to the precept laid out in Landrau-Romero, 212 F.3d at 613, and Smith, 943 F.2d at 167, we find that Plaintiff has not stated a timely claim of constructive discharge. Since Plaintiff has not sufficiently established that an act of political discrimination occurred in the one-year period before she filed the present action, her section 1983 claim is time-barred.

(3) Merits

Furthermore, even if we were to consider Plaintiffs' most recent affidavits as evidence of harassing phone calls, these statements alone are insufficient to establish a claim of constructive discharge against Defendant Cordero. Plaintiffs have not proffered any evidence that Cordero ordered the purportedly harassing phone calls or knew that they were happening. Since Plaintiffs have not proffered evidence or even alleged that Defendant Cordero committed an act of discrimination in the one-year period before they filed

suit, summary judgment is appropriate. Cf. Lopez-Carrasquillo v. Rubianes, 230 F.3d 409, 413 (1st Cir. 2000) (explaining that where a plaintiff has not established that a defendant committed a discriminatory act, there is no need to consider whether the complaint was timely filed as to that act).

B. Supplemental Jurisdiction

We decline to exercise supplemental jurisdiction over Plaintiffs' associated state-law claims against Defendants. See Rivera v. Murphy, 979 F.2d 259, 264 (1st Cir. 1992)(quoting Cullen v. Mattaliano, 690 F.Supp. 93 (D. Mass. 1988) ("[I]t is the settled rule in this Circuit that in a non-diversity case, where pendent state claims are joined with a federal cause of action and that the federal cause of action is [dismissed]...the pendent state claims should be dismissed.")).

IV.

Conclusion

In accordance, with the foregoing we **GRANT** Defendant Cordero's motion to dismiss. Docket Document No. 49.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 12th day of December, 2002.

JOSE ANTONIO FUSTE
U. S. District Judge